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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MARIA and
CARLOS RODRIGUEZ.

MARIA A. RODRIGUEZ,

Respondent,

v.

CARLOS RODRIGUEZ,

Appellant.

E060295

(Super.Ct.No. RFLRS16558)

OPINION

APPEAL from the Superior Court of San Bernardino County. Teresa S. Bennett,
Judge. Affirmed.

J. Manuel Sanchez & Associates, Antonio Cervantes and J. Manuel Sanchez for
Defendant and Appellant.

No appearance for Respondent.

I

INTRODUCTION

Carlos Rodriguez appeals from an order dated October 22, 2013, denying a motion to set aside a default judgment which was entered on November 26, 1997, in a marital dissolution action. Maria Rodriguez is representing herself and has not filed a respondent's brief. For ease of reference, we use the parties' first names.

Because Carlos consented to personal jurisdiction by appearing in court many times since 1997, we affirm the order of the family law court.

II

FACTUAL AND PROCEDURAL BACKGROUND

The record shows that, after Carlos was personally served in Mexico, he appeared in court more than 10 times from 1998 until 2013, before he filed a motion to challenge the 1997 default judgment. It is not clear from the record whether Carlos is a citizen of the United States or Mexico and whether he is fluent in English. All that is mentioned is that he is a native Spanish speaker and his parents live in Baja California.

A. 1997

Maria filed a petition for marital dissolution in July 1997. The date of marriage was May 18, 1991. The date of separation was March 26, 1997. The parties had two children born in 1993 and 1996, now over 18 years old. The proof of service shows Carlos was personally served at 9:30 a.m. on August 3, 1997, at "Kilometro 311, Carretera Transpeninsular Tijuana /La Paz, Baja California, Mexico," by Javier Padilla,

who is not a registered process server. Padilla signed, but did not date, the declaration of service. He also omitted the date at section 3.c. on the proof of service. The summons and proof of service were filed on August 8, 1997. Carlos's default was entered on November 14, 1997.

The court entered a default judgment on November 26, 1997. Maria was awarded sole custody of the children and Carlos was not awarded visitation but he was ordered to pay child support of \$1,687 a month. Maria was awarded spousal support of \$572 a month until death, remarriage, or cohabitation with another man.

B. 1998

A wage assignment order was filed on December 17, 1997. In December 1998, Carlos filed an income and expense declaration, seeking a modification of child support and visitation. That hearing was taken off-calendar.

C. 2000-2001

In February 2000, Carlos filed another income and expense declaration. At a hearing on April 3, 2000, both Maria and Carlos appeared and agreed to a written stipulation for temporary visitation. Carlos was represented by a lawyer. On June 12, 2000, the parties appeared at a hearing and agreed to a written stipulation for visitation, child support, and attorney's fees. At a review hearing on April 16, 2001, Carlos appeared with his lawyer and the court ordered Carlos to have monitored visitation.

D. 2005-2006

In November 2005, Carlos obtained a new lawyer. In June 2006, Carlos filed

another income and expense declaration, responding to a motion by the Department of Child Support Services. In September 2006, Carlos filed a request for an order to show cause regarding modification of child support, spousal support and arrears.

E. 2007

Carlos filed another income and expense declaration in January 2007 and the court ordered Carlos to file current income tax returns. Carlos filed another modification motion and declaration in May 2007. The court set a hearing on modifying spousal support for October 10, 2007. On October 1, 2007, the motion was dismissed and the trial date vacated.

F. 2010 and 2012

An abstract of judgment was issued on May 24, 2010. On November 29, 2012, the County of San Bernardino filed a motion for modification of child support. Carlos filed an income and expense declaration.

G. 2013

Antonio Cervantes began representing Carlos in January 2013. Carlos filed another declaration in January 2013 and March 2013. On March 20, 2013, the court ordered Carlos to pay child support of \$300 monthly for the child born in 1996.

G. Motion to Set Aside Default

On March 25, 2013, Carlos filed a motion to set aside the 1997 default judgment. In his supporting declaration, Carlos admitted being personally served by Javier Padilla on August 3, 1997, while having breakfast at his parents' house at "Rancho Los Pinos,

Kilometro 311, Carretera Transpeninsular Tijuana-LaPaz, Mexico.”¹ However, Carlos claims he did not understand what had occurred. Carlos hired a lawyer in December 1997 and again in November 2005. In 2013, the lawyers now representing him advised him that he had not been properly served in 1997 according to Code of Civil Procedure section 413.10, subdivision (c), and the Hague Service Convention.²

At the April 2013 hearing, Maria’s counsel argued Carlos had submitted to jurisdiction based on multiple appearances over 16 years. Carlos’s counsel argued there was no compliance with the Hague Service Convention because Carlos was “personal[ly served] without a Spanish translation.” The trial court denied the motion.

III

DISCUSSION

On appeal, Carlos asserts it violates due process to “hold him accountable for

¹ Rancho Los Pinos is about 202 kilometers south of Ensenada on Mexico’s Highway 1.

² The Hague Service Convention is a multilateral treaty finalized in 1965 by the Tenth Session of the Hague Conference of Private International Law to revise parts of the previously-adopted Hague Conventions on Civil Procedure with respect to service of process abroad. (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 698.) The formal name of the treaty is Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638). The text of the Hague Service Convention is presented in title 28, United States Code Annotated following Federal Rules of Civil Procedure, rule 4. The United States was one of the original signatories, and the Hague Service Convention went into force here in 1969. (See *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 130, 133-134.)

spousal support arrears in excess of \$300,000.”

Jurisdiction in a family law case involves three independent jurisdictional requirements: jurisdiction over the subject matter; jurisdiction over the marriage; and personal jurisdiction over the parties. (*Muckle v. Superior Court* (2002) 102 Cal.App.4th 218, 225; see *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1225.)

The superior court has subject matter jurisdiction over marital dissolutions, including spousal support, child support, and attorney’s fees. (Fam. Code, §§ 200, 2000 et seq., and 2010.) The exercise of personal jurisdiction is ultimately limited by substantive and procedural due process concerns. The forum court must have an adequate basis for the exercise of personal jurisdiction. (*Burnham v. Superior Court* (1990) 495 U.S. 604, 609; *County of San Diego v. Gorham, supra*, 186 Cal.App.4th at p. 1227.) Traditional notions of fair play and substantial justice permit the exercise of personal jurisdiction on the basis of either 1) physical presence in the forum state when personally served with process, 2) domicile in the forum state at the time suit is commenced, 3) consent to the exercise of personal jurisdiction, or 4) minimum contacts with the forum state. (*Burnham, at pp. 610-611; Muckle v. Superior Court, supra*, 102 Cal.App.4th at p. 226.)

Consent to personal jurisdiction cannot be based on a motion to dismiss for lack of personal jurisdiction. (Code Civ. Proc., § 418.11; Fam. Code, § 2012; *In re Marriage of Fitzgerald & King* (1995) 39 Cal.App.4th 1419, 1429-1430.) However, a nonresident respondent may consent to personal jurisdiction by making a general appearance in the

action. (*In re Vanessa Q.*, *supra*, 187 Cal.App.4th at p. 135; *In re Marriage of Jacobsen* (2004) 121 Cal.App.4th 1187, 1192; *In re Marriage of Aron* (1990) 224 Cal.App.3d 1086, 1095.)

In the present case, Carlos did not make a special appearance to dismiss or quash for lack of personal jurisdiction. (See *In re Marriage of Smith* (1982) 135 Cal.App.3d 543, 545-546.) Instead, Carlos consented to personal jurisdiction for many years by making multiple appearances in the family court.

It is long settled that a party's consent is a proper basis to confer personal jurisdiction over the party. While a court must have personal jurisdiction over parties (*County of San Diego v. Gorham*, *supra*, 186 Cal.App.4th at pp. 1226-1227), a general appearance occurs when the defendant takes part in the action or in some manner recognizes the authority of the court to proceed. (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 679; *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1279.)

A defect in service may be cured when a party makes a general appearance without objection that service was inadequate. A Mexican resident who has entered a general appearance in a family law action cannot contend that lack of compliance with the Hague Service Convention is fatal to personal jurisdiction because entering his appearance resulted in a finding of consent to the court's jurisdiction. (*In re Vanessa Q.*, *supra*, 187 Cal.App.4th at pp. 135-136.) Just so, in the present case, Carlos repeatedly

recognized and submitted to the jurisdiction of the family law court on issues of support and visitation.

Additionally, Carlos admitted to having been served in Mexico in August 1997. Even if he did not understand the legal documents when he was served, he obtained a lawyer in December 1997, who explained the case to him. Carlos made his first appearance in December 1998 when he filed pleadings with the court. Having long ago consented to personal jurisdiction, his appeal lacks merit.

IV

DISPOSITION

Whatever course of action Carlos might have taken against the 1997 judgment, his ongoing appearances in family court from 1998 until 2013, constituted submission of personal jurisdiction to the court. We affirm the family court's order and order Carlos to bear the costs of appeal.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.